

SEQUENCE OF DISSOLVING THE ESTATE.

It is imperative that the following sequence be followed when dissolving the estate. The first four rights have precedence over Inheritance. The distribution of shares to the heirs will take place only after excecution of these first four rights.

- 1) Return of Trusts
- 2) Burial Expenses
- 3) Payment of Debts.
- 4) Payment of Wasiyyat to non heirs not exceeding a 1/3
- 5) Distribution of Shares to the Heirs - will be effected last.

1. RETURN OF TRUSTS:

- a. Should the mayyit have any trust in his possession, these should be returned to their rightful owners or seperated from the estate.

2. BURIAL EXPENSES

- a. All expenses relating to the burial only - Shroud, Grave, Timber, Hearse etc.
- b. Expenses for the feeding of relatives & friends is not included here. Should the heirs wish to do so, the expense will be borne by them.

3. PAYMENT OF DEBTS

- a. After burial expenses, the mayyit’s creditors have a prior right on the assets in his estate.
- b. The mahr of the wife, if not paid by the husband, will be regarded as a debt.
- c. The Rooh of a mumín is prevented from entering Jannat as long as his creditors have not been satisfied. Once a Sahabí ؓ said: “Rasulullah ﷺ! My brother has died and has left small children. Should I spend money on them (rather than pay his debts)?” Rasulullah ﷺ replied “Your brother is imprisoned on account of his debts. Pay his Debt”

4. PAYMENT OF WASIYYAT

- a. Wasiyyat can only be made for non heirs which should not exceed 1/3 of the value of estate after payment of burial expenses and debt.
- b. The Wasiyyat will only be valid if the Musi is sane and an adult.
- c. If a Wasiyyat is made, it becomes the incumbent duty of the excecutors/heirs to excecute the Wasiyyat before distributing the shares to the heirs.
- d. Wasiyyat can be made for a Non Muslim although there are no ties of inheritance between Muslims and Non-Muslims.
- e. Can exceed 1/3 with permission of Heirs - On condition that Heirs are sane, mature and gives permission without duress. Note that the consent of a minor is not valid.
- f. While the Musi (the one making the Wasiyat) is alive, he has a right to revoke the wasiyyat. It is essential that the Musi uses such terms which clearly indicate that the Wasiyyat has been revoked, e.g. “I am revoking/cancelling this Wasiyyah”.
- g. During **Maradhul Maut** (the last illness which leads to a persons death) one’s freedom of bequeathing one possessions as Wasiyyat is curtailed, as at this stage the right of the heirs are activated. Thus any operation conducted during **Maradhul Maut** are subjected to certain conditions which are quite detailed. Please consult the Ulema for more information.
- h. Wasiyyat Waajibah:
 - Provision for Outstanding Shariah Obligations (e.g. Salaat, Fast, Zakaat, Kaffarah, Qurbaani, Haj) may be made in the 1/3 Wasiyyat - Only if written or a verbal declaration that was witnessed by 2 witnesses which is compulsory.
 - For a person who missed his Salaat & Fast, He should make taubah and endeavour to make qaza. If qaza not completed during his lifetime, provision can be made in the wasiyyat for fidya to be paid on that which is oustanding.
- i. Wasiyyat Naafilah:
 - It is mustahab to make wasiyyat that burial shroud and burial is in in conformity with the sunnah
 - If the estate is considerable, it will the be mustahab to bequeath any sum up to 1/3 to any charitable works. e.g Masjid, Madressah etc. However should the estate be not considerable it is more meritorious to leave the entire estate to the heirs.
- j. For more masail relating to Wasiyyat, consult your local Ulema.

5. DISTRIBUTION OF SHARES TO HEIRS

Rules Regarding Inheritance

Causes of Inheritance

- 1. Proximity (Strength of Blood Ties) - The one closer in proximity to the the mayyit will displace those further away.
- 2. Nikah

Requisites Of Inheritance

- 1. There must be Mayyit
- 2. There must be a Tarikah (Estate)
- 3. There must be a Heir/s

Pre-Requisites Of Inheritance

- 1. Person has to have passed away/ or assumption of death after 4yrs.
- 2. Heir/s must be alive.

Wealth Excluded From Inheritance

- 1. Wealth aquired by haraam means.
- 2. Insurance/Endowment Policies.
- 3. For more exclusions refer to a reliable Aalim.

Order of Priorityin Allocation of Shares

- 1. Zawil Furoodh
- 2. Asabah
- 3. Radd - Redistribution to the Zawil Furoodh
- 4. Zawil Arham - Relatives that do not fall in class 1 & 2.
- 5. Baitul Maal or Distribution to the Poor

Disqualified Heirs

- 1. Slave – Only right the slave has is Talaat.
- 2. Murder of Murith: Hanafi/Hambali: Intentional or Accidental
Shaafi: Any Type of Murder
Maaliki: Premeditated only
- 3. Difference of Religion
- 4. Murtad (Apostate) : Hanafi: Can inherit only from the period that he/she was a muslim

Additional Rulings

- 1. If for some reason a person wishes to dispose of his estate to his heirs during his lifetime, he should bear in mind the following:
 - The motive should not be to deprive an heir.
 - Sons & daughters should be given an equal share and value and not in the ratio 2:1 as is the case in inheritance.Even if a person distributes his entire estate during his lifetime to his heirs, all the heirs will still remain heirs in whatever wealth he happens to leave behind.
- 2. Disobedience of children does not disqualify them from their inheritance. If there is a valid shariah reason to deprive an heir, it will proper to distribute the assets of one’s estate during one’s lifetime leaving nothing for distribution after one’s death. This will be a regarded as a gift to them and not their inheritance.
- 3. A son who dies during the lifetime of his father, does not inherit and nor is his share transferred to his children. He is simply regarded as non-existent.
- 4. Surely, Allah has given every person his (or her) right. Thus one cannot bequeath for a heir. (Mishkat with reference to Abu Dawud, P. 265)
- 5. If a man divorces his wife and then dies before expiry of her iddat, she will inherit in his estate.
- 6. If the nikah was ended by way of Khula, then she will not be entitled to inheritance even the husband dies before expiry of her iddat.
- 7. If any factor which deprives an heir of inheritance exist in a son he will be regarded as non existent, e.g. he is kafir. The grandson now becomes the Asabah.
- 8. Where a group of people who are related to each other die in die in the same accident and it cannot be determined which of them died first, they shall be presumed to have died simultaneously.

Factors That Do Not Deprive Heirs

- 1. Marriage of a widow
- 2. Disobedience of Children
- 3. Infancy
- 4. Estranged Wife which is still in the Husband Nikah. Any children she begets by way of adultery, will be considered the children of the Husband.

Miscellaneous

- 1. The onset of a wet dream or menses will indicate that one is now Baaligh. Should there be a absence of these, then the age of Bulooqh will be 15 years according to Islamic Shariah.

Relatives Who Are Not Heirs

- 1. No ties of Inheritance between Step Parents & Step Children
- 2. Adopted children
- 3. A illegimate child will not inherit from his biological father & vice versa. A illegimate child is attributed to the mother and will inherit from her and vice versa.

- 9. It is not permissible to appoint a kafir or a fasiq to be a executor/s.
- 10. If there are more than one excecutors, any one of them cannot act unilaterally. Except in the case of the funeral expenses and expenses for the mayyits dependents.
- 11. Where one’s share is received only after a few years, then zakaat will have to be paid for the those years on the amount received.
- 12. Rights are not subject to Meerath. The business partnership between the deceased and existing partners dissolves with his death. The heirs rights extend only to only the share of the deceased in the partneship. So to does a lease lapse with death.
- 13. If the heirs decide to retain the fixed property, this is permissible. A fair rental has to be fixed for the property. The net icome will be shared among the heirs in proportion to their shares. It is not permissible for any heir or heirs to occupy the fixed property without paying a mutually agreed rent.

Common Abuses And Violations

- 1. A Non Islamic Will (Secular Will) which is Invalid in the Shariah.
- 2. Deleting a heir e.g:
 - Disobedient child.
 - Daughters who are married to wealthy husbands.
- 3. Reduction in Fixed Shares.
- 4. Impositions of Un-Islamic Restrictions e.g:
 - a. House is bequeathed to the wife and balance is distributed according to the laws of inheritance.
 - b. Heirs are denied immediate possession of their shares.
 - c. Appointment of excecutors and administrators (bereft of Imaan, taqwa and Islamic knowledge) who impose on the heirs un-islamic norms, values and restrictions.
- 5. Introduction of non heirs into the distribution e.g:
 - To regard a adopted child as an automatic heir on par with biological children.
- 6. By bequeathing more than 1/3 to an outsider.
- 7. Denial of the rights of Creditors.
- 8. Heir delays/impedes the dissolving the of the estate, in so doing deprives other heirs of of deriving benefit of their share.

Those Persons Who Will Inherit

MALES

- 1. Sons
- 2. Son’s Sons & ١
- 3. Father
- 4. Paternal Grandfather ٢
- 5. Full Brother
- 6. Paternal Brother
- 7. Uterine brother
- 8. Full Nephew (Full Brothers Son)
- 9. P-Nephew (P-Brother Son)
- 10. Full Uncles (Father’s full brother)
- 11. P-Uncles (Father’s P-Half brother).
- 12. Full Cousins (Full Uncles Son)
- 13. P-Cousins (P-Half uncles son)
- 14. Husband

N.B: Under normal circumstances, if any among the following six are present, Husband, Wife, Father, Mother, Daughters - (Zawil Furoodh) & Sons - (Asabah), they will always inherit.

About Ilmul Meerath:

Ilmul Meerath is a summarised version on the Laws Inheritance based on the Four Schools. It’s object is to impart a deeper understanding and greater insight into the Laws of Inheritance. The detailed Laws of Inheritance are intricate and a specialist in this field should be consulted when the need arises. **For more detailed rulings please consult the Ulema and please verify the dissolving of the estate and apportioning of the shares to the heirs with them. Should you follow any other Madthab please consult the Ulema, as certain rulings may differ.**

References:

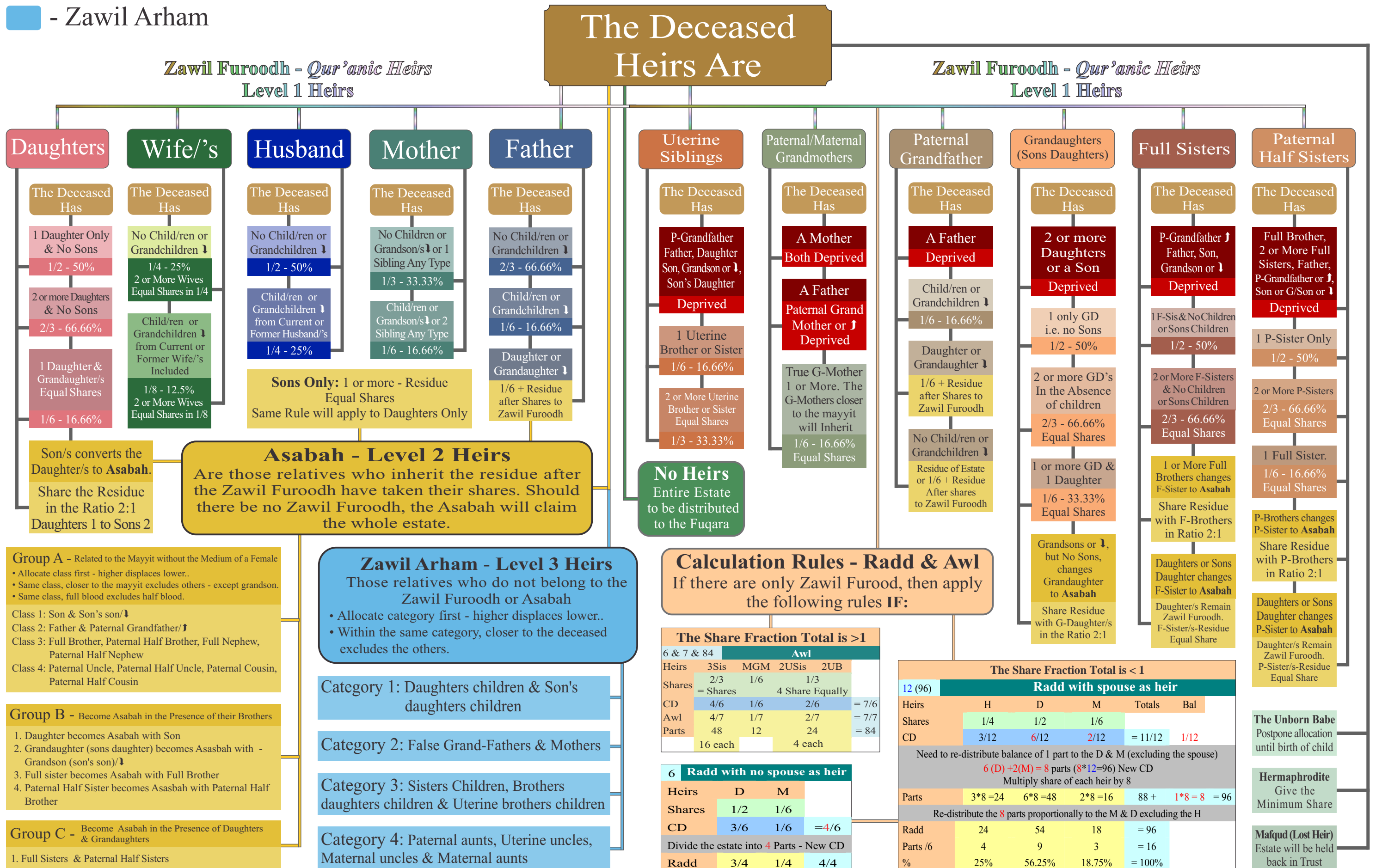
- 1. Classes on Inheritance conducted by Mufti A.K Hoosein ؒ - Hijri 1439
Kitaab:- al-Mawarith fi al-shar’iah al-Islamiyah fi daw’ al-Kitab wa-al-sunnah by Sheikh Mohammed Ali Sabuni
- 2. Kitaabul Meerath - Majlisul Ulema of South Africa
- 3. Islamic Law of Succession by Attorney Mahomed Shoaib Omar

NURUL HUDA PUBLICATIONS: <https://nurulhudasa.wordpress.com>

- Deprived by
- Asabah.
- Zawil Arham

Inheritance Share Allocation Reference Chart

↑ - Ascendants however high up
↓ - Decendants however low down



The Exceptions In Share Allocations

Masalataan Umriyataan

Heirs	Husband	Father	Mother	Heirs	Wife	Father	Mother
Shares	1/2	2/3	1/3	Shares	1/4	2/3	1/3
CD	3/6	4/6	2/6	CD	3/12	8/12	4/12
Total	9/6 or 1½			Total	15/12 or 1¼		

Solution: Apportion normal share to Spouse, From the remainder the Father will get 2/3 and the Mother 1/3.

Heirs	Husband	Father	Mother	Heirs	Wife	Father	Mother
Answer	1/2	Remainder of 1/2 in Ratio of		Answer	1/4	Remainder of 3/4 in Ratio of	
Shares	1/2	2/3	1/3	Shares	1/4	2/3	1/3
%	50%	33.33%	16.67%	%	25%	50%	25%

Masala Himariya or Hajariya

When a Full Brother/s comes with 2 or more Uterine Siblings. This incident occurred during the period of Hadhrat Umar ؓ caliphate. There are two view regarding this.

5.7.a: Hadhrat Ali ؓ view is that the Full Brother is deprived.

6	Full Brother Deprived - Hanafi's & Hambali's				
Heirs	H	M	UB	USis	B
Shares	1/2	1/6	1/3		0
CD (6/6)	3/6	1/6	2/6		0
Parts (6)	3	1	2		0

5.7.b: Hadhrat Zaid ibn Thabit ؓ view is that the Full Brother inherits.

6 (18)	Brother Inherits with Uterine Siblings - Shafi's & Maaliki's				
Heirs	H	M	UB	USis	B
Shares	1/2	1/6	1/3 shared equally		
CD (6/6)	3/6	1/6	2/6		
Parts (6)	3	1	2 shares to be divided by 3		

Calculations for dividable shares that are easier to allocate:

Take total number of shares required i.e 3 (UB,USis & B) *6 (CD) = 18 (New CD).

Multiply the parts of each heir by 3 (UB,USis & B).

Parts (18)	9	3	6 (divided by 3 = 2 Parts each)
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Inheriting or Deprivation Due to a Relative

Mubarak Male Relative: Inherits due to their presence. e.g.

6	2 Granddaughters Deprived			6	2 GD Inherits because of Grandson		
Heirs	2D	F	2GD	Heirs	2D	F	2GD GS
Shares	2/3	1/6 +R	0	Shares	2/3	1/6	Asabah Residue 2:1
CD	4/6	1/6 +1/6	0	CD	4/6	1/6	1/6

Unlucky Male Relative: Deprives due to their presence. e.g.

12	Granddaughter Inherits				
Heirs	H	F	M	D	G/D
Shares	1/4	1/6	1/6	1/2	1/6
					Quota 2/3
C.D	3/12	2/12	2/12	6/12	2/12 =15/12
Awl	3/15	2/15	2/15	6/15	2/15 =15/15

12	Granddaughter Deprived by Grandson					
Heirs	H	F	M	D	G/D	G/S
Shares	1/4	1/6	1/6	1/2	Asabah 1/6	
C.D	3/12	2/12	2/12	6/12	0 No Bal.	=13/12
Awl	3/13	2/13	2/13	6/13	0	=13/13

Examples of Share Allocations

DEFINITIONS

Full Brother & Sister: One Father & Mother.

Paternal Brother & Sister: One Father & **Different Mothers.**

Uterine Brother & Sister: One Mother & **Different Fathers.**

ABBREVIATIONS

- ♂ - Decendants however low down
- ♀ - Ascendants however high up.
- Husband - **H** Wife - **W** Father - **F** Mother - **M** Son - **S** Daughter - **D**
- Paternal Grandfather- **PGF** Paternal Grandmother - **PGM**
- Maternal Grandfather- **MGF** Maternal Grandmother - **MGM**
- Grandson (son's sons)- **GS** Granddaughter (son's daughters)- **GD**
- Grandchildren (sons sons & daughters)- **GC**
- Full Sister- **Sis** Full Brother- **B**
- Paternal Half Sister - **PSis** Paternal Half Brother- **PB**
- Uterine Sister- **USis** Uterine Brother- **UB**
- Full Uncle- **U** Paternal Half Uncle- **PU**
- Full Nephews - **N** Paternal Half Nephews- **PN**
- Full Cousin- **C** Paternal Half Cousins - **PC**

24 & 384 (24*16 Parts)							Only
Heirs	W	M	6S	4D	B	2PC	PU
Shares	1/8	1/6	Asabah - Residue -2:1 12+4 = 16 Parts		0	0	0
CD	3/24	4/24	17/24		0	0	0
Parts	3	4	17		0	0	0
Parts	48	64	272		= 384		
%	12.5%	16.67%	70.83%		= 100 %		
				204	68		
				6 Shares	4 Shares	♂ Daughters Single Share	
Sons Double Share ➡				34 each	17 each		

8 & 136 (8*17 Parts)				12 & 36 (12 *3 Sons)			
Heirs	2W	6S	5D	Heirs	H	Father	3 Sons
Shares	1/8	Residue - 7/8 - 2:1 = Share 12+5 = 17 Parts		Shares	1/4	1/6	Residue = Share
Parts	17	119		CD	3/12	2/12	7/12 12/12
Parts	17	84	35	Parts	9	6	21 = 36
Parts	2 Shares 8.5 each	6 Shares 14 each	5 shares 7 each				
				3 Shares 7 each			

12 & 48 (12*4S)						8 & 16 (8*2D)					
Heirs	H	M	4S	PG	2B	Heirs	W	2D			
Shares	1/4	1/6	Residue = Share	1/6	0	Shares	1/8	R-7/8 = Share			
CD	3/12	2/12	5/12	2/12	0	Parts	2	14	= 16		
Parts	12	8	20	8	0						
			4 Shares 5 each								
			2 Shares 7 each								

24/27 & 162 (27 * 6D)								
Heirs	2W	M	F	6D				
Shares	1/8	1/6	1/6	2/3				
= Share					= Share			
CD	3/24	4/24	4/24	16/24	= 27/24			
AWL	3/27	4/27	4/27	16/27	= 27/27			
Parts	18	24	24	96	= 162			
				2 Shares 9 each	6 Shares 16 each			

24 & 72 (24*3GS)						2 & 16 (2*8N)			
Heirs	W	F	3GS	1D	3SIS	Heirs	H	8N	
Shares	1/8	1/6	Residue = Share	1/2	0			(Brothers Sons)	
CD	3/24	4/24	5/24	12/24	0	Shares	1/2	1/2	
Parts	9	12	15	36	0	Parts	8	8	= 16
			3 Shares 5 each						

24 & 72 (24*3SIS)								
Heirs	W	M	2D	2GD	3SIS	Heirs	W	3SIS
Shares	1/8	1/6	1/2	1/6	Residue = Share	Shares	1/4	3/4 = Share
CD	3/24	4/24	12/24	4/24	1/24			
Parts	9	12	36	12	3 - 1 each	3 Shares 1 each		
						= 72		

24 /27						Awl		
Heirs	2D	PGF	W	M	3SIS	Heirs	D	U
Shares	2/3	1/6	1/8	1/6	0	Shares	1/2	1/2
CD	16/24	4/24	3/24	4/24	0			
AWL	16/27	4/27	3/27	4/27	0			
						=27/24		
						=27/27		

24		Radd				
Heirs	W	D	PGM	MGM	Bal	
Shares	1/8	1/2	1/6 = Share			
CD	3/24	12/24	4/24		= 19/24	5/24 `=24/24
	5/24 to be shared proportionally by heirs Excluding Wife					
	Multiply each share by 16 (12 D+4 P/M-GM)					
Parts	48	192	64		= 304	+80 =384
5/24 Parts		12*5=60	4*5=20			=80
Parts	48	252	84		=384	
%	12.5%	65.63%	21.87% - 2 Shares Divide Equally		=100%	

6 & 4										
Heirs	D	3GD		Heirs	D	GS	2GD	Heirs	2D	GD
Shares	1/2	1/6		Shares	1/2	1/2		Shares	Whole	0
CD	3/6	1/6	`=4/6	Parts		4 Shares		Estate = Share		
Radd	3/4	1/4	=4/4			2	1+1			